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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.L. et al., Persons Coming Under the
Juvenile Court Law.

B215944

(Los Angeles County
Super. Ct. No. CK60785)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GROVER S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Valerie Skeba, Juvenile Court Referee, Judge. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

Grover S. (Father) and Teresa K. (Mother) are the parents of L.L. (L., born June 2004) and A.S. (A., born December 2005). Father has another daughter, Al.S. (Al., born March 2004), with Margarita S. Mother, Margarita S., and Al. are not parties to this appeal. Father appeals the order of the juvenile court terminating his parental rights as to L. and A. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

This is Father's second appeal. In an opinion filed July 21, 2009, we affirmed the trial court's denial of his Welfare and Institutions Code section 388 petition.¹

L. and A. (sometimes jointly referred to as the children) first came to the attention of the Department of Children and Family Services (Department) in May 2006 after it received allegations that Mother was using drugs and Father was physically abusing Mother. The children were released to Mother, and at her request, Father was restrained from attempting to locate her and the children. Father was granted reunification services and the Department was ordered to provide the parents referrals for, among other things, domestic violence and anger management. The court ordered that Father be provided monitored visitation at the Department's office.

Initially, the parties reached a settlement in January 2007, and the children were placed with Mother. However, in February 2007, the Department filed a section 387 petition, alleging Mother had tested positive for methamphetamines. The children were placed with the maternal grandmother (Grandmother).

In January 2008, after the Department reported that Father had failed to complete his court-ordered programs, the juvenile court terminated his reunification services and, following the Department's recommendation, ordered unmonitored visitation.

In May 2008, Father filed the section 388 petition that was the subject of our prior opinion. He sought reinstatement of reunification services or, in the alternative, five

¹ All further statutory references are to the Welfare and Institutions Code.

overnight visits a week. The Department reported that Father had made several threats to Grandmother and the social worker. He called the Child Abuse Hot Line and alleged that Grandmother was physically abusing the children; however, the allegations were determined to be unfounded. Father violated the court's restraining order by going to Mother's home and picking the children up for overnight visits. He had been terminated from the domestic violence and parenting programs. On May 14, Father was arrested for burglary and theft. Prior to the July 14 hearing on the petition, the court was informed that Father had threatened to "cut [Grandmother's] throat" after he learned she had transferred the children to a different school.² As noted, the court denied the petition.

At a permanency planning hearing on December 15, 2008, the court ordered the social workers to evaluate the sibling bond between A., L., and Al. Grandmother recommended that A. and L. be adopted by her brother and sister-in-law in Texas. Grandmother told the social worker that the couple had no children at home, and they had met and formed a bond with A. and L. Grandmother stated that she planned to move to Texas so that she could still be with the children.

Grandmother reported to the social worker that she knew of only one occasion when A. and L. were together with Al. during the past year. She said they got along well. A. and L. had never asked her about Al. On one occasion, the social worker noticed that Al. accompanied Father for his visit with A. and L.

Father filed a second section 388 petition on March 17, 2009. A combined hearing on the petition and the permanent plan was held on April 27, 2009.

The social worker's report prepared for the April 27, 2009 hearing recommended that Father's parental rights be terminated as to A. and L. She stated that she had grave concerns about Father's extensive criminal record and his ability to provide a stable and safe environment for the children. For the past 17 months, he failed to test for drugs and alcohol and did not enroll in individual counseling to address issues of domestic violence

² Grandmother sought a temporary restraining order. On September 2, 2008, the court issued a three-year protective order, barring Father from harassing Grandmother and coming within 100 yards of her.

and anger management as ordered by the court. The social worker reported that Father's visits from December 2008 through March 2009 had become sporadic, as he failed to show up for four visits and cancelled two others. He continued to be argumentative and verbally abusive towards the social worker. He once pushed the social worker, who then had to call security guards during every subsequent visit. He also was verbally abusive over the telephone with a representative of the monitoring agency. The social worker met with a police detective who told her that Father was "a very dangerous man." The detective provided her with a police report of an October 2008 incident during which Father pulled a gun on Margarita S., the mother of Al. Father had restraining orders against him filed by Margarita S., Grandmother, and Mother.

Father testified that he had completed two parenting classes and an anger management program. He admitted that despite completing the anger management program he was arrested for a domestic violence incident involving Al.'s mother on October 12, 2008. He stated that he had joint legal and physical custody of Al. He said he visited A. and L. once a week, but admitted missing a visit during the past two weeks. He said the children loved the visits and were sad when they were over. The week before the hearing, he brought Al. to visit A. and L. He claimed the three girls loved each other and were happy to see one another. He insisted that L. and A. had developed a strong bond with Al.

Counsel for the Department argued that Father had a troubled relationship with Mother, that narcotics were found on him at the time of his October arrest, and that there was no parental bond and no bond between the children and their half-sibling Al.

The court denied the section 388 petition and terminated the parental rights of Father and Mother as to A. and L. It stated, "Well, I think the problem is . . . that father has some pretty significant anger management issues, and the reality is . . . that he may have completed his domestic violence course, but he's continued to cause problems for people and to . . . frighten people. And he may have finished the course, but I don't think he benefited from it. . . . We've had difficulty arranging visits. We actually had to go to a private monitoring. . . . So I think there's some pretty clear evidence here that father

has not really changed his circumstances. I think that he completed the course, but it doesn't appear to have impacted how he lives his life very much. There are multiple restraining orders out. One of them was issued by this court. And I don't do that lightly. So I don't believe there's a change in circumstances. And I really think it's in the best interests of these children to have a stable home, where they're not in the middle of a dispute between maternal side of the family and the father. And, I mean, I think father has done his best to try to jeopardize placement and to try to intimidate people so that he can get his children back. And that's not good for these children. So I don't think it's in the best interests to grant the 388. With respect to the parent-child relationship, I think the father's the one who presents a lot of risk to these children by intimidating people who are trying to provide stability for them. . . . A lot of what father is alleging is not supported by any of the evidence in the file. So I don't really believe there's a significant sibling relationship. But, frankly, I think the best thing for these children is to get as far away from the father as possible. And it is sad that a sibling relationship might have to be sacrificed to give these children stability. But I really think that this is the only answer. So I believe the children's need for stability far outweighs any benefit they would have by continuing a sibling relationship or a parental relationship. So I don't believe that either one applies. Father's not really acted in a parental role, with respect to these children, for a very long time. And, frankly, I think these children need to be in a different situation, where they're not in the middle of this dispute father is having with the Department and with the maternal relatives."

This appeal followed.

DISCUSSION

Father contends the juvenile court erred in terminating his parental rights because he established that the children's adoption would be detrimental. He asserts adoption would sever a beneficial relationship L. and A. have with him and with their half-sibling, Al. We examine the evidence supporting each claim.

I. The Contact and Benefit Exception

Pursuant to section 366.26, subdivision (c)(1), once the juvenile court determines a child is adoptable, the court shall terminate parental rights and order the child placed for adoption unless the court finds a compelling reason for determining that termination would be detrimental to the child due to certain circumstances. One such circumstance is where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

It is the parent’s burden to show that termination would be detrimental. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) “To meet the burden of proof for the section 366.26, subdivision (c)(1)(B)(i) exception, the parent must show more than frequent and loving contact or pleasant visits. [Citation.] . . . The parent must show he or she occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment from child to parent. [Citations.]” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 953-954.)

To justify application of section 366.26, subdivision (c)(1)(B)(i), any relationship between the parent and child must be sufficiently significant that the child would suffer detriment from its termination. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.) The juvenile court must consider many variables, including the child’s age, the length of time the child was in parental custody and in foster care, and the effect of interaction between parent and child and the child’s particular needs. (*Id.* at p. 467; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 810-811.) The court must then balance the strength and quality of the parent-child relationship against the security and sense of belonging that a stable family would confer on a child. (*In re Zachary G., supra*, 77 Cal.App.4th at p. 811.) “If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250.) The appellant has the burden of showing the order is not supported by substantial evidence. (*Id.* at p. 251.)

Father established that he and his children enjoyed their visits. However, he failed to show that L. and A. would benefit from a continuation of the parent-child relationship. Their contact was limited to weekly daytime visits. He had not provided the children with a safe and stable home. That parental role was taken by Grandmother. Substantial evidence supports the trial court's conclusion that due to Father's proclivity for creating conflict with the people responsible for caring for his children (including Al.'s mother), he was the greatest impediment to L. and A. ever enjoying a peaceful and nurturing relationship with him. In the final analysis, the strength and quality of the bond L. and A. had with their Father is overshadowed by the benefit the children will derive from obtaining a secure loving adoptive family.

The trial court properly refused to apply the contact and benefit exception to adoption.

II. The Sibling Exception

Section 366.26, subdivision (c)(1)(B)(v)³ provides an exception to termination of parental rights when severing the sibling relationship would be detrimental to the dependent child. "Unlike the beneficial parent-child relationship exception . . . , a parent is not required to show as an element of proof that the siblings have maintained regular contact and visitation. Instead, the parent must prove, by a preponderance of the evidence, that termination of parental rights would cause 'substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship.' [Citation.] [¶] To determine the nature and extent of the sibling relationship, the Legislature directs the juvenile court to consider the factors set forth in section 366.26, subdivision (c)(1)(E). [Citations.] These factors include, *but are not limited to*, the following: '[W]hether the child was raised with a sibling in the same home [and] whether the child shared significant common experiences *or* has existing close and strong bonds with a sibling [and] whether ongoing contact is in the child's best

³ This subdivision was formerly numbered as (c)(1)(E).

interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.”” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007-1008.)

The parent must show that a sufficiently significant sibling relationship exists and that its severance would be detrimental to the child. If the court finds there is a substantial detriment, it must “weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” (*In re L. Y. L.*, *supra*, 101 Cal.App.4th at pp. 952-953.) We review the record for substantial evidence to support the court's findings. (*Ibid.*)

Father reported to the social worker that the three girls loved each other and had bonded. Father argues adoption would interfere with the relationships A. and L. have with Al. and his relatives.

Contrary to Father's assertions, there is no evidence of a sibling relationship. The children were together at two monitored visits during 2009. Grandmother reported that L. and A. never asked about Al. The record reflects that L. and A. were only four and five years old at the time of the April 2009 hearing and had never lived with Al. Although they had appeared to enjoy the time they spent with their half-sibling, there is no evidence that the relationship was sufficiently significant to cause detriment upon its termination.

The trial court considered the strength of the sibling relationship and reasonably placed more value on the benefit L. and A. would receive from the stability and permanence of adoption. We find substantial evidence supports its decision. (*In re Celine R.* (2003) 31 Cal.4th 45, 61; *In re Daisy D.* (2006) 144 Cal.App.4th 287, 293.)

DISPOSITION

The order terminating Father's parental rights is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

WILLHITE, J.